

Brent O. Hatch (5715)
hatch@hatchpc.com
Tyler V. Snow (12668)
snow@hatchpc.com
HATCH LAW GROUP PC
22 East 100 South, Suite 400
Salt Lake City, Utah 84111
Telephone: (801) 869-1919

Counsel for Defendant

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

ROBERT AND RENEE WAAS, individuals,

Plaintiffs,

v.

RED LEDGES LAND DEVELOPMENT INC.,
a Florida corporation, an individual,

Defendant.

**STATEMENT OF SUPPLEMENTAL
ATTORNEY FEES AND EXPENSES AND
MOTION TO AMEND JUDGMENT**

Case No. 2:20-cv-00580-TC

District Judge Tena Campbell

On January 3, 2022, this Court “ORDERED that by January 18, 2022, Red Ledges must file a bill of costs for any fees or expenses incurred after February 27, 2021.” (ECF No. 41.) This supplement does that, and Defendant Red Ledges Land Development, Inc. (“Red Ledges”) moves the Judgment be amended to include the fees and expenses incurred since February 27, 2021.

INTRODUCTION

In its February 24, 2021 Order, the Court dismissed all of Plaintiffs’ claims stating that “the Waases have not shown that they have complied with the mandatory procedures set forth in Article XX” of the applicable CC&Rs. (ECF No. 29 at 10.) Following that Order, on March 2, 2021, Red Ledges moved for its attorneys fees and costs. (ECF No. 31) This Court granted the Motion based

on the prevailing party language in the parties' contract (ECF No. 7-3 at § 12.a), concluding that "Red Ledges was the prevailing party here," and that "[a]fter scrutinizing each line item, the court is convinced that these amounts [\$70,470.69 in fees] were reasonably incurred." (ECF No. 41 at 6, 9.) Since Red Ledges prevailed on this case in February last year, Plaintiffs have chosen to vigorously challenge Red Ledges' right to recover any attorney fees, and even the reasonableness of Red Ledges' fees. As a result of those challenges and now two rounds of full briefing on those issues, over the past year Red Ledges has incurred an additional \$33,040 in fees and \$552.80 in expenses.

In compliance with the Court's January 3, 2022 Order directing Red Ledges to supplement its fees and costs by January 18, 2022, and pursuant to Federal Rules 7, 54(d)(2), 59(e) and Utah Code § 78B-8-826, Red Ledges respectfully moves this Court to amend the Judgment to include an additional award of attorney fees in the amount of \$33,040 and expenses in the amount of \$552.80, for the 11 months from February 26, 2021 through January 13, 2022, against Plaintiffs, jointly and severally. Red Ledges also requests \$3,000 in fees in having to file this motion, the supporting declaration, and the anticipated reply memorandum. These amounts are proper and reasonable in light of the additional rounds of briefing that were necessary to establish Red Ledges' right to its attorney fees. The legal and factual bases for Red Ledges' request are set forth below and are further supported by the Declaration of Brent O. Hatch in Support of Red Ledges' Motion (the "Hatch Declaration") filed herewith.

AMOUNT CLAIMED

Red Ledges requests that this Court award it additional attorney fees in the amount of \$33,040 and expenses in the amount of \$552.80 from February 27, 2021 through January 13, 2022. Such amounts are in addition to the amounts already awarded by the Court. An additional \$3,000 in

fees for the filing of this motion and the anticipated reply are also requested. These amounts are set forth in greater detail in the Hatch Declaration filed herewith.

BASIS FOR AWARD

The Court ruled that Red Ledges is entitled to an award of its fees and costs under the Lot Purchase Agreement signed by Plaintiffs. (ECF No. 41 at 3-6.) Moreover, Utah law allows for the recovery of fees and expenses that were necessarily incurred to establish the right to fees and costs. *See, e.g., Salmon v. Davis County*, 916 P.2d 890, 896 (Utah 1996) (concluding that “fees for fees” are recoverable in the statutory fee-shifting statutory context, stating with approval that “the court of appeals recently ruled that **the prevailing party in a dispute over a contractual attorney fees provision was entitled**, not only to attorney fees on appeal, but also **to the fees it incurred establishing the reasonableness of the fees** for which it was entitled to be indemnified” (citing *James Constructors v. Salt Lake City*, 888 P.2d 665, 674 (Utah Ct. App. 1994) (emphasis added)); see also *Emeny v. United States*, 526 F.2d 1121, 1127 (Fed. Ct. Cl. 1975) (concluding that “\$69,240.15 expended by the plaintiffs in establishing their entitlement to recover litigation expenses and the amount of such expenses” was recoverable under the statutory provision at issue)).

Moreover, the Court “ORDERED that by January 18, 2022, Red Ledges must file a bill of costs for any fees or expenses incurred after February 27, 2021.” (ECF No. 9.)

Following the Court’s ruling which made Red Ledges the prevailing party, and as recognized by the Court, Red Ledges has incurred various legal fees and expenses in connection with this action. These fees and expenses were incurred in the performance of the following services:

- a. Preparing the original motion for attorney fees;
- b. Preparing a declaration associated therewith;

- c. Preparing a reply in support of the original motion for attorney fees, including supporting Red Ledges' right to fees and the reasonableness of the fees;
- d. Work on notice of supplemental authority;
- e. Prepare "full briefing" response (as requested by the Court, ECF No. 39) to Plaintiffs' objection to Magistrate Judge Pead's award of fees; and
- f. Other related work to establish Red Ledges' right to fees.

Additional detail regarding these fees and expenses is set forth in the Hatch Declaration.

Red Ledges' fees and expenses in defending this case and establishing its right to fees are reasonable in light of the complexity of the case, the issues involved, the contentions and allegations of the Plaintiffs, the experience of attorneys involved in the litigation, and the amount in controversy. Therefore, Red Ledges requests that the Court award its additional attorney fees and expenses.

CONCLUSION

Based on the foregoing, Red Ledges requests an award of additional attorney fees in the amount of \$33,040.00 and expenses in the amount of \$552.80 from February 27, 2021 through January 13, 2021. Red Ledges also requests an additional \$3,000.00 for the fees needed to prepare this motion and the reply it anticipates it will need to file, for a total of \$36,592.80 in fees to be added to the judgment.

The judgment should therefore be amended and increased as follows:

\$71,521.38 (original judgment)
+ \$36,592.80 (supplemental amount)
\$108,114.18 (amended judgment)

DATED this 18th day of January, 2022.

HATCH LAW GROUP PC

By: */s/ Brent O. Hatch*
Brent O. Hatch
Tyler V. Snow

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of January, 2022 I caused a true and correct copy of the foregoing to be served via CM/ECF upon all counsel of record.

By: */s/ Brent O. Hatch*
Brent O. Hatch
Hatch Law Group PC